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10/820,338	04/07/2004	Sean Christopher Endler	81486 7114	8133
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FITCH EVEN TABIN & FLANNERY 120 SOUTH LASALLE SUITE 1600 CHICAGO, IL 60603			EXAMINER DANIELS, ANTHONY J	
			ART UNIT	PAPER NUMBER
			2622	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,338

Applicant(s)

ENDLER ET AL.

Examiner

ANTHONY J. DANIELS

Art Unit

2622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-893)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment, filed 11/13/2007, has been entered and made of record. Claims 1-25 are pending in the application.

Response to Arguments

1. Applicant's arguments with respect to claims 1-6,8-12,15-17 and 20-25 have been considered but are moot in view of the new ground(s) of rejection.
2. Applicant's arguments regarding claim 7 have been considered. However, the Pelotis reference has not been argued on its merits and is being used again in this rejection.
3. Applicant's arguments regarding claims 13 and 14 have been fully considered but they are not persuasive.

Applicant has argued claim 13 on the grounds that it depends on claim 1, and arguments concerning claim 1 have already been set forth. Those arguments are now moot.

Regarding claim 14, Applicant argues, "...Franken discloses that "if the show has sufficiently high ranking or ratings, then it could be selected to be recorded by video recorder" (col. 4, lines 24-26). Franken discloses recording the show rather than displaying the show on the content, however, Franken does not disclose displaying the content based on the comparing the rating value..." The examiner respectfully submits that Franken does teach selectively displaying the content based on comparing the rating value. Furthermore, the examiner submits that the

selective displaying is based on two things. First, the show must have sufficiently high ranking. Second, the user must make the additional determination to display the recorded show. In the broadest reasonable interpretation of the claim, the content is selectively displayed based on the comparing of the rating value.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Amended claim 19 recites, "...comparing the number of viewers with a predetermined minimum number of votes, wherein the content is not displayed if the number of viewers does not meet the predetermined minimum number of votes..." Applicant's specification discloses on p. 18, paragraph 2, "...In Block 750, a check is performed to ensure that each piece of content receives a sufficient number of votes to reach a predetermined level. For example, **if the number of votes falls short of the predetermined level, then the sample size of the votes is not large enough to compute the rating value for the content...**" It does not logically follow that the content will not be displayed if the number of viewers does not meet the predetermined minimum number of votes. What does logically follow is that there will be no rating value for

the content. This is not the same as receiving a rating value of 0. It is unclear from the specification whether the system will interpret no rating as a zero rating or whether the system will interpret no rating as a rating of 10, 9 or 8. This ambiguity does not reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim Rejections - 35 USC § 103

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1-6 and 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900).

As to claim 1, Franken et al. teaches a method comprising: receiving content (Col. 2, Lines 43-46); creating profile information associated with the content (Col. 3, Lines 5-7);

showing the content on a display device (Col. 3, Lines 39-42); and updating the profile information associated with the content to reflect viewer information (Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*). The claim differs from Franken et al. in that it further requires that a vote, reflecting the quality of the content, is received on the content and that the profile information is updated according to the vote.

In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

As to claim 2, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 further comprising storing the profile information associated with the content within a storage device (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim 3, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 further comprising capturing the content with a content capturing device (*The television shows are captured by a video camera or the like.*).

As to claims 4-6, Although Franken et al. does not state it explicitly, **Official Notice** is taken that capturing content, particularly television programs, using a digital video camera that

also records the audio associated with the video is a well known concept in the art. One of ordinary skill in the art would recognize the numerous advantages of capturing content with digital video cameras.

As to claim **8**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein receiving the content occurs in real time relative to capturing the content (see Franken et al., Col. 2, Lines 42-48, "...**live** video programming...").

As to claim **9**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein the content is video footage (see Franken et al., Col. 2, Lines 42-48, "...**live** video programming...").

As to claim **10**, Franken, as modified by Zilliacus, teaches the method according to claim 1 wherein the content is a digital image (*See Official Notice statement for claims 4-6*).

As to claim **11**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein the content is audio data (*See Official Notice statement for claims 4-6*).

As to claim **12**, Franken et al., as modified by Zilliacus, teaches the method according to claim 1 wherein a rating value is determined for the content based on the vote (see Franken et al., Col. 3, Lines 47-50).

As to claim **13**, Franken et al., as modified by Zilliacus, teaches the method according to claim 12 further comprising comparing the rating value with a predetermined value rating threshold (see Franken et al., Col. 4, Lines 21-30).

As to claim **14**, Franken et al., as modified by Zilliacus, teaches the method according to claim 13 further comprising selectively displaying the content based on the comparing the rating value (see Franken et al., Col. 4, Lines 21-30).

As to claim 15, Franken et al., as modified by Zilliacus, teaches a system comprising: means for receiving content (Col. 2, Lines 43-46); means for creating profile information associated with the content (Col. 3, Lines 5-7); means for showing the content on a display device (Col. 3, Lines 39-42); and means for updating the profile information associated with the content to reflect the viewer information (Col. 3, Lines 44-47). The claim differs from Franken et al. in that it further requires means for receiving a vote that reflects the quality of the content and that the profile information is updated according to the vote.

In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

2. Claims 7,16,17 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) and further in view of Peliotis et al. (US 2002/0065678).

As to claim 7, Franken et al., as modified by Zilliacus, teaches the method according to claim 1. The claim differs from Franken et al., as modified by Zilliacus, in that it further requires the step of identifying the content from multiple pieces of content.

In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents. In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

As to claim 16, Franken et al. teaches a method comprising: receiving content (Col. 2, Lines 43-46); creating profile information associated with content (Col. 3, Lines 5-7); showing the content to a plurality of viewers (Col. 3, Lines 42-44); receiving viewer information on the content from each of the plurality of viewers (Col. 3, Lines 43-47, "...viewership information..."); determining a rating value for the content based on viewer information (Col. 3, Lines 47-50, "...ranking..."); and displaying the content to the plurality of viewers based on the rating value of the content (Col. 4, Lines 21-26; *{See arguments above.}*). The claim differs from

Franken et al. in that it further requires the steps of identifying the content (1), receiving a vote reflecting the quality of the content from a plurality of viewers (2).

(1) In the same field of endeavor, Peliotis teaches method of selecting and excluding video segments in a video stream to be viewed by a viewer comprising: placing markers in the video stream that indicate the position of a division between the video segments of the video stream; placing tags in the video stream that indicate content of each video stream; using video preference information of the viewer to select and exclude video segments by comparing the tags with the video preference information of the viewer; inserting alternate video segments that replace video segments that have been excluded by the viewer ([0008]). The markers are therefore used to identify a separate piece of video segment or content within the video stream or multiple pieces of content, and the tags are used to describe the individual contents. In light of the teaching of Peliotis et al., it would have been obvious to one of ordinary skill in the art to include the content identification step in the system of Franken et al., as modified by Zilliacus, because an artisan of ordinary skill in the art would recognize that this would allow the viewer the ability to select video segments based on content ([0006]) so that they would not have to view content that is not desired to be viewed, but rather focus on content that the viewer desires ([0005]).

(2) In the same field of endeavor, Zilliacus teaches a video system wherein a plurality of users watching a television program can vote as to the quality of the programs. Voting results are then tabulated by the system (Figure 2; [0033] – [0036]). In light of the teaching of Zilliacus, it would have been obvious to one of ordinary skill in the art to employ the voting system in the system of Franken et al., because an artisan of ordinary skill in the art would recognize that this

would provide a higher quality assessment of viewership. More specifically, the system would be able to avoid false positive, instances where a viewer falls asleep or leaves the television on while away when a program that does not represent their interest is airing.

As to claim 17, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16 further comprising updating the profile information associated with the content to reflect the rating value (see Franken et al., Col. 3, Lines 44-47; *{The ranking is part of the profile information.}*).

As to claim 20, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16 further comprising storing the profile information (see Franken et al., Col. 3, Lines 51-55; *{It is inherent that the personal computer or other processor stores the program names and the ranking.}*).

As to claim 21, Franken et al. teaches a device, comprising: a content identification module to detect content (see claim 16 above); a storage module to store the content (Figure 1, video recorder “116”) and profile information associated with the content (see claim 20 above); an interface module for receiving the content and transmitting the content based on the profile information corresponding to the content (Col. 2, Lines 41-43); and a content rating module receives a rating value from a viewer for the content and updates the profile information associated with the content (see claim 17 above).

As to claim 22, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 wherein the content includes one of a video footage (see Franken et al., Col. 2, Lines 42-46), digital image, and audio data.

As to claim **23**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for formatting the content to be displayed to the viewer (see Franken et al., Figure 1, video recorder “116”; Col. 5, Lines 36-40, “...compressed...”).

As to claim **24**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the system according to claim 21 further comprising a rendering module for selectively formatting the content for display to the viewer based on the rating value associated with the content (see Franken et al., Col. 5, Lines 36-40, “...compressed...”).

As to claim **25**, Franken et al. teaches a computer-readable medium having computer executable instructions (see Franken et al., Figure 1) for performing a method comprising: identifying content; creating profile information associated with content; showing the content to a plurality of viewers; receiving a vote on the content from each of the plurality of viewers; determining a rating value for the content based on the vote; and displaying the content to the plurality of viewers based on the rating value of the content. *See claim 16 above.*

3. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franken et al. (US # 7,028,323) in view of Zilliacus (US 2004/0005900) in view of Peliotis et al. (US 2002/0065678) and further in view of Lautzenheiser et al..

As to claim **18**, Franken et al., as modified by Zilliacus and Peliotis et al., teaches the method according to claim 16. The claim differs from Franken et al., as modified by Zilliacus and Peliotis et al., in that it further requires the step of checking for a number of viewers submitting the vote.

In the same field of endeavor, Lautzenheiser teaches a method and apparatus for validating a survey database and identifying portions of the survey database that are potentially problematic with the idea of checking the number of responses for selected answers in the survey database to ensure that corresponding user requests are based on a statistically significant sample size, or the user is notified otherwise (Col. 32, Lines 7-11; *{The number of responses for selected answers is the same as the number of viewers submitting the vote.}*). In light of the teaching of Lautzenheiser, it would have been obvious to one of ordinary skill in the art to include survey database validation scheme in the system of Franken et al., as modified by Zilliacus and Peliotis et al., because an artisan of ordinary skill in the art would recognize that this would prevent the results from being misleading when results may be based on a statistically insignificant sample size, thereby misleading the user (Col. 2, Lines 17-20).

Conclusion

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANTHONY J. DANIELS whose telephone number is (571)272-7362. The examiner can normally be reached on 8:00 A.M. - 5:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lin Ye can be reached on (571) 272-7372. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tuan V Ho/
Primary Examiner, Art Unit 2622

AD
5/15/2008